

Filed for intro on 02/13/97
SENATE BILL 1264 By
Atchley

HOUSE BILL 1118
By Fowlkes

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 1,
relative to accountancy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-1-102(3), is amended by deleting the remainder of the sentence after the language "reserved to" and by substituting instead the language "licensees operating in offices or firms registered with the board;".

SECTION 2. Tennessee Code Annotated, Section 62-1-103, is amended by adding a new subdivision as follows:

() "Licensee" means a certified public accountant, public accountant or a holder of a permit to practice issued pursuant to Tennessee Code Annotated, Section 62-1-108, 62-1-109, or 62-1-110;

SECTION 3. Tennessee Code Annotated, Section 62-1-104, is amended by deleting subsection (d) in its entirety.

SECTION 4. Tennessee Code Annotated, Section 62-1-107(e), is amended by deleting the language "in an amount not to exceed five hundred dollars (\$500)" and inserting instead the language "not to exceed the actual costs incurred".

SECTION 5. Tennessee Code Annotated, Section 62-1-109, is amended by deleting subsection (d) in its entirety.

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SECTION 6. Tennessee Code Annotated, Section 62-1-111(a)(3) , is amended by inserting the language “quality review” after the word “renewal” and before the words “and other necessary fees”.

SECTION 7. Tennessee Code Annotated, Section 62-1-111(a)(5), is amended by deleting the language “and 62-1-109” and the language “and for a license as a public accountant”.

SECTION 8. Tennessee Code Annotated, Section 62-1-111(a)(13), is amended by deleting such subdivision in its entirety and by substituting instead the following:

Shall publish, from time to time in its discretion, but at least annually, information of interest to the accountancy profession;

SECTION 9. Tennessee Code Annotated, Section 62-1-114(2)(A), is amended by inserting the word “or” after the language “at the time the application is made”.

SECTION 10. Tennessee Code Annotated, Section 62-1-122, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A licensee who is engaged in the practice of public accounting shall neither pay any consideration or commission to obtain a client nor accept any consideration or commission for the referral of a client to others when the licensee or the licensee's firm also performs for that client any of the following:

(1) An audit or review of a financial statement;

(2) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation does not disclose a lack of independence; or

(3) An examination of prospective financial information. This prohibition applies during the period in which the licensee is engaged to perform any of the services listed in this subsection and the period covered by any historical financial statements involved in such listed services.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed in this section and the period covered by any historical financial statements involved in such listed services.

(b) A licensee who is engaged in the practice of public accounting who is not prohibited by this act from performing services or receiving consideration or a commission and who is paid or expects to be paid consideration or a commission shall disclose that fact in compliance with the requirements of this section to any person who the licensee recommends or refers a product or service to which the commission relates.

(c) Any licensee who accepts consideration or a commission for a referral shall disclose such acceptance or payment to the client in compliance with the requirements of this section.

(d) The board shall promulgate regulations specifying the terms of the disclosures required by subsections (c) and (d) and the manner in which the disclosures shall be made. Such regulations shall comply with the following:

(1) The disclosure must be in writing and be clear and conspicuous;

(2) The disclosure must state the amount of the consideration or commission or must state the basis on which it will be computed; and

(3) The disclosure must be made at or prior to the time of the recommendation or referral of the product or service for which consideration or commission is paid or prior to the client retaining the licensee to whom the client has been referred for which a referral fee is paid.

(e) Nothing in this section shall be construed to prohibit:

(1) Payments for the purchase of all, or a part, of an accounting practice;

(2) Retirement payments to persons formerly engaged in the practice of public accountancy or payments to the heirs or estates of such persons; or

(3) Payments, including incentive or bonus payments, to employees or members of an accounting firm as compensation for their services.

SECTION 11. Tennessee Code Annotated, Section 62-1-123, is amended by deleting the section in its entirety and by substituting instead the following:

(a) As used in this section, "contingent fee" means a fee established for the performance of any service pursuant to an arrangement under which a fee will not be charged unless a specified finding or result is attained, or under which the amount of the fee is otherwise dependent upon the finding or result of such service. "Contingent fee" does not mean a fee fixed by a court or other public authority, or a fee related to any tax matter which is based upon the results of a judicial proceeding or the findings of a governmental agency.

(b) A licensee who is engaged in the practice of public accounting shall not receive or agree to receive a contingent fee from a client for the following:

(1) Performance of any professional services for a client for whom the licensee or person associated with the licensee performs any of the following:

(i) An audit or review of a financial statement;

(ii) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation does not disclose a lack of independence; or

(iii) An examination of prospective financial information; or

(2) Preparation of an original tax return.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed in this subsection and the period covered by any historical financial statements involved related to such services.

(c) Any licensee who accepts or agrees to accept a contingent fee shall disclose the terms of such contingent fee to the client in compliance with the requirements of this section.

(d) The board shall promulgate regulations specifying the terms of the disclosures required by subsection (c) and the manner in which the disclosures shall be made. Such regulations shall comply with the following:

(1) The disclosure must be in writing and be clear and conspicuous;

(2) The disclosure must state the amount of the contingent fee or must state the basis on which the contingent fee will be computed; and

(3) The disclosure must be made at or prior to the time the licensee undertakes representation of or performance of the service upon which a contingent fee will be charged.

(e) Nothing in this section shall be construed to prohibit:

(1) Payments for the purchase of all, or a part, of an accounting practice;

(2) Retirement payments to persons formerly engaged in the practice of public accountancy or payments to the heirs or estates of such persons; or

(3) Payments, including incentive or bonus payments, to employees or members of an accounting firm as compensation for their services.

SECTION 12. Tennessee Code Annotated, Title 62, Chapter 1, Part 1, is amended by adding a new section as follows:

(a) Every licensee shall notify the board in writing within thirty (30) days of:

(1) Any material change in the information previously furnished to or required to be furnished to the board, including but not limited to, the holder's mailing address;

(2) Any conviction by a court of competent jurisdiction of a felony; or

(3) The limitation, suspension or revocation of the right to practice public accountancy by any state board of accountancy or any other state or federal agency.

(b) Every office registered pursuant to Tennessee Code Annotated, Section 62-1-113, shall notify the board in writing within thirty (30) days of any change of address or location of the office.

SECTION 13. This act shall take effect upon becoming a law, the public welfare requiring it.